



Appeals of John R. and Elke K. Rosenberger

Appellants jointly submitted a 1977 state income tax return form 540 that was devoid of financial information. They stated on the form that they were refusing to answer financial questions on various constitutional grounds, and asserted that they had not received any "constitutional dollars." Although respondent advised them that they had not filed a valid return and demanded that they file one, appellants did not do so. Consequently, respondent determined the income of each appellant and issued a separate assessment against each one. Both assessments included penalties for failure to file, for failure to file after notice and demand, for negligence, and for failure to pay estimated tax.

The facts and arguments in this case, with one exception, are virtually the same as those in the Appeal of Arthur W. Keech, decided by this board on July 26, 1977. (See also Appeal of Floyd Banks and Delores J. Banks, Cal. St. Bd. of Equal., May 21, 1980.) The additional argument made in the instant case is that penalties and interest should not be computed on the total tax liability without regard to state income tax withheld through payroll deduction. However, such withholding is specifically prohibited from being taken into consideration in the determination of the deficiency, interest, or penalties, except the penalty for failure to file a timely return. (Rev. & Tax. Code, §§ 18591.1 and 18681, et. seq.) Pursuant to section 18681 of the Revenue and Taxation Code, the amount of tax prepaid through withholding reduces the base upon which that penalty is computed. (See Appeal of Ottar G. Balle, Cal. St. Bd. of Equal., Feb. 6, 1980.) Since appellants' forms W-2 show that state-income tax was withheld from their earnings, the respective penalties for failure to file must be adjusted downward to reflect such withholding.

Therefore, for the reasons stated above and for the reasons stated in the Appeal of Arthur W. Keech, supra, we will, with the noted modification, sustain respondent's action in the present appeals. (See also Appeal of K. L. Durham, Cal. St. Bd. of Equal., March 4, 1980.)

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O R D E R

Pursuant to the views expressed in the opinion of the board on file in this proceeding, and good cause appearing therefor,

IT IS **HEREBY** ORDERED, ADJUDGED AND DECREED, pursuant to section 18595 of the Revenue and Taxation Code, that the action of the Franchise Tax Board on: (1) the protest of John R. Rosenberger against a proposed assessment of additional personal income tax and penalties in the total amount of \$943.28 for the year 1977; and (2) the protest of Elke K. Rosenberger against a proposed assessment of additional personal income tax and penalties in the total amount of \$896.56 for the year 1977, be and the same is hereby modified in that credits shall be allowed against the proposed assessments of additional tax to reflect the amount of California personal income tax withheld from appellants' respective salaries, and the amounts of the respective penalties imposed under section 18681 of the Revenue and Taxation Code shall be reduced to reflect such withholding. In all other respects, the action of the Franchise Tax Board is sustained.

Done at Sacramento, California, this 28th day of October, 1980, by the State Board of Equalization, with Members Nevins, Reilly, Dronenburg and Bennett present.

- Richard Nevins, Chairman
- George R. Reilly, Member
- Ernest J. Dronenburg, Jr., Member
- William M. Bennett, Member
- _____, Member